

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

JOE ALVES, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE GOODYEAR TIRE & RUBBER  
COMPANY,

Defendant.

C.A. No. 1:22-CV-11820-WGY

**DECLARATION OF JOHNNY MCINTOSH**

I, Johnny McIntosh, declare as follows:

1. I make this declaration in support of the Motion to Dismiss the Complaint or, in the Alternative, Transfer Venue of the defendant The Goodyear Tire & Rubber Company (“Goodyear”).

2. I make this declaration based on my own personal knowledge and review of Goodyear’s records made in the ordinary course of business and at or near the time of the events described. If called upon, I could and would so testify to the matters discussed in this declaration.

3. I have worked for Goodyear for 15 years. I am currently the Senior Director Digital & Ecommerce of Goodyear and have served in that position since 2021. My previous roles at Goodyear include Lead Software Design Analyst, Manager of Software Development, and Director of Global Applications.

**Goodyear Generally**

4. Goodyear is incorporated in Ohio, with a principal place of business at 200 Innovation Way, Akron, Ohio.

5. Goodyear operates a website at [www.goodyear.com](http://www.goodyear.com) which provides information regarding the company and Goodyear's products and services (the "website"). Goodyear operates the website from Ohio. Goodyear's website is accessible throughout the United States.

6. Goodyear's marketing team, which operates Goodyear's website and receives session replay recordings, is located in Ohio.

#### **Goodyear's Use of Session Replay Technology**

7. Goodyear utilizes session replay technology to improve its website design and user experience.

8. Goodyear does not "procure" Session Replay Code from Microsoft Clarity, as alleged in the Complaint at ¶¶ 40-42. Rather, Goodyear merely utilizes a tag product provided by Microsoft for marketing purposes on Bing, Microsoft's web search engine. While Microsoft provides the option for Clarity's session replay technology to be integrated within that tag, Goodyear has not enabled Microsoft Clarity for use on its website.

9. As relevant here, Goodyear utilized replay technology from Content Square, Inc. ("Content Square").

10. In its use of session replay technology, Goodyear does not use geographic criterion that affect which website sessions are recorded.

#### **Goodyear's Website**

11. As part of my current role at Goodyear, I have regular access to, and am familiar with, Goodyear's website, including the website's interface and the Terms of Use applicable to the website.

12. When a user visits Goodyear's website, the user is presented with a banner notifying the user that Goodyear's website "uses cookies to enhance user experience and to

analyze performance and traffic on our website. We also share information about your use of our site with our social media, advertising and analytics partners. Visit our **Privacy Policy** to learn more or manage your personal preferences...” A true and correct copy of the banner on Goodyear’s website is attached as **Exhibit A**.

13. According to Goodyear’s records, Goodyear’s website has included this banner since June 16, 2021. Before June 16, 2021, Goodyear utilized a similar banner notifying website visitors of Goodyear’s use of cookies and the terms that applied to visitors’ use of the website.

14. When a user clicks the hyperlinked “Privacy Policy” in this banner, the user is taken to the landing page titled “Terms, Conditions & Privacy Policy,” with links to the Terms, Conditions and Privacy Policy applicable to the Goodyear website. A true and correct copy of this page is attached as **Exhibit B**.

15. In addition to the Privacy Policy being hyperlinked in the banner, Goodyear’s Terms of Use and Privacy Policy are also hyperlinked in the footer on every page of the website.

16. When a user clicks on the “Terms of Use” title, the user is shown Terms of Use applicable to the website. At the top of this page, it reads:

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ACCESSING, BROWSING, OR USING THIS WEBSITE, ONLINE SERVICE OR MOBILE APPLICATION, YOU AGREE TO BE BOUND BY THE TERMS DESCRIBED HEREIN AND ALL TERMS INCORPORATED BY REFERENCE, ALONG WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT USE THIS WEBSITE, ONLINE SERVICE OR MOBILE APPLICATION.

...

These Terms of Use apply to your access to, and use of, all or part of any website, online service or mobile application of The Goodyear Tire & Rubber Company and/or its subsidiaries and affiliated companies (collectively, "Goodyear"), including goodyear.com, m.goodyear.com, goodyear.ca, fr.goodyear.ca, espanol.goodyear.com, kellytires.com, dunloptires.com, corporate.goodyear.com, goodyearaviation.com, goodyeartrucktires.com, goodyearotr.com, racegoodyear.com, and goodyearrvtires.com and any other website, online

service, or mobile application where these Terms of Use are posted or are accessible via hyperlink (collectively, the “Sites”).

A true and correct copy of Goodyear’s Terms of Use, which have been present on the website since September 10, 2015, is attached as **Exhibit C** (available at <https://corporate.goodyear.com/us/en/more/terms-conditions-and-privacy-policy/terms-of-use.html> (last visited Dec. 12, 2022)).

17. In the Terms of Use is a section titled “Applicable Laws.” The title is bolded and in all capital letters. This section reads:

**APPLICABLE LAWS**

Your use of the Sites will be governed in all respects by the laws of the State of Ohio, USA, without regard to choice of law provisions. You consent and submit to the sole and exclusive jurisdiction by and venue in the courts located in the State of Ohio, one of the United States of America, in any legal proceeding directly or indirectly arising out of or relating to the Sites. By using the Sites, you consent to service of process in accordance with the rules of such courts, irrevocably submit to the jurisdiction of such courts, and waive any objection that you may have to either the jurisdiction or venue of such courts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15 day of December, 2022.

  
Johnny McIntosh